(1) Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Gary L. Oetting

Petitioner

v.

State Board Of Tax Commissioners

Respondent

On Petition For Writ Of Certiorari
To The Indiana Tax Court

PETITION FOR WRIT OF CERTIORARI

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8500

QUESTIONS PRESENTED

1. Does the State of Indiana have the authority to interfere with federal contract between the Congress of the United States and a sovereign citizen?

2. Does the Congress of the United States have the authority to transfer its immunity to another sovereign?

3. Does the State of Indiana have the right to tax ALLODIAL PROPERTY CONVEYED VIA Federal Land Patents issued prior to an Act of Congress January 26th.1847. giving the assent of Congress to certain States, (including Indiana) to impose a Tax upon all Lands hereafter sold by the United States therein?

4. Has the State of Indiana violated the constitutional rights of its citizens by using an unconstitutional tax formula to collect property taxes for nearly a decade?

5. Does the State of Indiana violate the rights of its citizens when it claims, the State has a right to use unconstitutional law in order to protect itself, even though the paid State legislature has failed to enact laws to correct the unconstitutional formula or provide alternative forms of funding for nearly a decade?

LIST OF PARTIES AND INFORMATION REQUIRED BY RULE 29.6

All parties are listed in the caption. The original lower court filing was made by Gary L. Oetting, the first general partner of the KEAG Family Limited Partnership, as allowed by Indiana law. Gary L. Oetting has filed pro se to represent his interest in United States Supreme Court. There is no publicly held interest involved.

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Petitioner, Gary L. Oetting, pro se respectfully request this Court to issue a writ of certiorari to review the judgment of the Indiana Tax Court entered in this action on September 17th, 2001.

OPINIONS AND ORDERS BELOW

The opinion of the Indiana Tax Court was not published. The court's opinions are reproduced in the Appendix at pages 2 and 10.

JURISDICTION

The judgment sought to be reviewed was dated and entered on September 17,2001. In the Indiana Tax Court (App. 09).

Petitioners filed a timely application for request to transfer jurisdiction, which the Indiana Supreme Court denied by an order dated and entered on February 4th., 2001. (App. 22).

This petition for a writ of certiorari is being filed within 90 days from the date petitioners' request to transfer jurisdiction was denied. Both constitutional and federal questions presented by this petition were properly and timely raised in the trial court before being denied transfer by the Indiana Supreme Court. This Court therefore has jurisdiction to review this case pursuant to: 28 U.S.C. Sect. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLED

1. The constitutional provision in this case is contained in Article I, Section 10 of the United States Constitution. And read as follows:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver coin a Tender in payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. The statutory provision involved is an Act of Congress, S 23 passed January 26,1847. And reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress is hereby given to the several States admitted into the Union prior to the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and twenty, to impose a tax or taxes upon all lands hereafter sold by the United States, in said States, from and after the day of such sale: Provided, That the assent hereby given shall in no wise impair that provision of the compact with the said States which declares that all lands belonging to citizens of the United States residing without the said States shall never be taxed higher than lands belonging to persons residing therein. APPROVED, January 26, 1847.

STATEMENT OF THE CASE

The Indiana Tax Court's decision is based upon the States current financial crisis and not upon the law. Honorable Judge Thomas Fisher in 1996 ruled Indiana's property tax law unconstitutional. And declared Indiana had a right to use unconstitutional law to protect the State until a new law could be written. For nearly a decade the political parties and the special interest groups have been fighting for control and privilege of writing a favorable, constitutional tax formula that has not yet been written. The State is unwilling to hear any further substantive challenges to its tax system. Whether the challenges are based on unconstitutional law or Acts of Congress. There has been a systemic effort to prevent a fair and unbiased hearing on my legal argument.

The process began in 1997 with attempt to file a State form 133. This form is a request for a refund of property tax. The request was based upon the State's lack of taxing authority on the Federal Land Patents transferred immunity. Our second basis for seeking refund was based upon taxes collected with the use of a tax formula that was declared unconstitutional by Indiana Tax Court in 1996.

I say attempted filing because the Allen County Auditors office denied having the State forms and had no knowledge of how I could obtain them. After finally obtaining the forms and filing them with the Allen County Auditor, they lost six years of filings. After threat of

litigation, three years of nine submitted, were rejected by the Allen County Review Board and then forwarded to the Indiana Tax Board for review. The legal process leading to Indiana's Supreme Courts denial to transfer jurisdiction is as follows:

A. Indiana State Board Of Tax Commissioners Petition Hearing

On March 17th.1999, Hearing officer Ellen Yuhan held a petition hearing on the three years Allen County officials finally allowed to be forwarded to the Indiana Tax Board. At that time Gary L. Oetting submitted copies of the missing six years lost by the Allen County Auditors Office. Hearing officer Ellen Yuhan accepted the filings. The basis for the refund request and removal of said property from Allen County's tax rolls was the use of unconstitutional tax formula to collect taxes and lack of State jurisdiction to tax Federal Land Patents. Hearing officer was unaware of Federal Land Patents.

On April 27,1999 State Board of Tax Commissioners issued their Final Determination on the three years of petitions, denied. In accordance with (IC6-1.-15-5) a complaint was filed with the Indiana Tax Court.

B. Proceedings In Indiana Tax Court

On June 11th.1999, KEAG Family Limited Partnership filed complaint in Indiana Tax Court. KEAG Family Limited Partnership was seeking the refund of taxes paid 1994 thru 1998 plus penalties, interest and attorney fees. Also Plaintiff was requesting the three parcels be removed from tax base as they are outside Indiana's taxing jurisdiction. They were contained within Federal Land Patents, certificates #131 and #25,043.(App.58, 60)

October 26,1999 Respondents file Motion For Summary Judgment with the Indiana Tax Court. The Indiana Tax Board was seeking a summary judgment based on the fact that Gary L. Oetting, first general partner could not represent the KEAG Family Limited Partnership.

The hearing on both causes was held April 27th.2000, 10:00 o'clock a. m. at the Allen County City-County Building, Fort Wayne, IN. Honorable Thomas G. Fisher presided.

July 2nd.2001, Petitioner sends letter to the court requesting a reasonable time line when the court might render a decision. (App.55)

July 10th.2001, Petitioner files Supporting Brief containing, Fletcher v. Peck, a unanimous United States Supreme Court decision supporting Land Patents as contracts.

Sixteen months after the case was heard, on September 17th.2001 Judgment was rendered simultaneously on both Motions for Summary Judgment (App. 17) and Tax Court

Ruling. The Motion for Summary Judgment was denied, however the cause was ruled in the favor of the Respondents. (App. 02)

C. Proceedings In Indiana Supreme Court

September 21st.2001, Gary L. Oetting filed a Motion For Clarification of Pro Se Representation with the Indiana Supreme Court. (App. 18) The lower court had already ruled my representation was valid. As pro se I was just attempting to insure I was in good standing before filing my petition. The clerk of the court could not answer my question and suggested I do it in the form of a motion to the court.

September 26th.2001, I received an Order from the court which was a non-answer coupled with what I considered to be a veiled threat to me personally if I filed the petition in the Indiana Supreme Court. (App. 20) The Chief Justice Randall Shepard suggested the Indiana Bar Association might want to file a separate action against Gary L. Oetting for practicing law without a license.

On October 16th.2001, Gary L. Oetting filed a Petition For Review with the Indiana Supreme Court on behalf of the KEAG Family Limited Partnership.

One Hundred and eleven days later on February 4th.2002 the Indiana Supreme Court denied the Petition To Transfer! (App. 22)

REASONS FOR GRANTING THE WRIT

The court below was unable to use any evidence or case law introduced by the State. Instead it resorted to developing a case for the State. The Indiana Tax Court took sixteen months to develop a defense for the State. Not a single piece of evidence introduced by the State was referenced or concurred with by the Court. After sixteen months of searching, the Court relied on its own findings based on Oregon case law, which did not apply. Oregon was admitted to the Union forty-three years after Indiana was admitted and the Federal laws had changed. Specifically, an Act of Congress S 23. Approved January 26. 1847. (App. 57) By building a defense for the State, Judge Fisher created an unfair bias in the court, denying a fair trial for the plaintiff's. Additionally the Court has created a Constitutional crisis by relying on its own ruling. A ruling providing the State with the right to continue using unconstitutional law in order to shield it's self from the effects of unconstitutional law. (app.24)

The Indiana Tax Court and the Indiana Supreme Court have decided to ignore the Constitution of the United States. Specifically Article I, Section 10., and allow the State to interfere with Federal Contract.

By ignoring the Constitution the State does not have to be burdened by: Fletcher v. Peck, Supreme Court of the United States, 1810,10U.S. (6Cranch) 87, 3 L.Ed. 162 Unanimous Opinion.

In Fletcher v. Peck, Chief Justice Marshall clearly states the Court's opinion that land grants are contracts. And keeping in line with Article I, Section10 of the Constitution forbids interference from the States!

I. THE COURT BELOW DECIDED AN IMPORTANT QUESTION ON THE USE OF UNCONSTITUTIONAL LAW THAT IS AT ODDS WITH THE STANDARD OF LAW

It is well settled that unconstitutional law is null and void. "An unconstitutional law is void, and is as no law. An offense created by it is no crime. Action under it is not merely erroneous, but is illegal and void." *Exparte Siebold, 100 U.S. 376.*

(The right) to prohibit the invasion of the rights of property by the enforcement of an unconstitutional law, was fully considered and settled in an elaborate opinion by Mr. Justice Gray, in *Re Sawyer, 124 U.S. 200, 31L.ed.402, 8 Sup. Ct. Rep.402*

"unconstitutional law must be treated as having no effect whatsoever from the very date of its enactment" *Chicago, I&L. Co. v. Hackett,228 U.S. 559 (1913)*

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no

protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." *Norton vs.Shelby County 118 U.S. 425 p. 442*

In 1996 Thomas G. Fisher, Judge Indiana Tax Court ruled the Indiana property tax law unconstitutional. *Town of St.John v. State Bd. of Tax Comm'rs* (St. John I, 1996) (App. 24)

In 1998, the Indiana Supreme Court affirmed the Indiana Tax Courts ruling that "the existing cost schedules...violates the Property Taxation Clause of the Indiana Constitution." *State Bd. Of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1030, 1043 (Ind. 1998).

That same year, however The Indiana Tax Court declared "[r]eal property must still be assessed, and, until the new regulations are in place, must be assessed under the present system." *Whitley Prods., Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1121 (Ind. Tax Ct. 1998) *review denied; see also Town of St. John v. State Bd. Of Tax Comm'rs*, 729 N.E.2d 242, 246, 251 (Ind. Tax Ct. 2000) (ordering real property in Indiana to be reassessed under constitutional regulations as of March 1, 2002 and providing that until then "real property tax assessments shall be made in accordance with the current system")

In effect, what the Indiana tax court has done since 1996, was unconstitutional. While the Petitioners might concede the State has a "limited" right to protect itself, such as one year. Allowing the state legislator one full session to

correct any defects in the current law or create an alternative form of revenue that is fair.

Many other forms of tax are available to the State such as flat income tax or sales tax that would provide the State with sufficient revenue. During the decade of using the unconstitutional formula many hundreds of citizens have lost their homes or property in county tax sales. Property that was taken from citizens using an illegal, unconstitutional tax formula. It is the absolute "responsibility" of our legislators to provide for the welfare of the State and its citizens. Should the elected officials of our State fail at their jobs, they should suffer the consequences of their failures! There is no basis in law that would allow the State of Indiana a special protection from the effects of unconstitutional law beyond an extremely "limited" time to change the law or discard it.

II. The Court Below Has Ignored The Transferred Immunity Given By The Congress Of The United States!

In Fletcher v. Peck, Supreme Court of the United States, 1810, 10 U.S. (6 Cranch) 87,3 L.Ed. 162 , Justice Marshall wrote in his opinion,"When,then, a law is in its nature a contract, when absolute rights have vested under that contract; a repeal of that law cannot devest those rights;"

The terms of the federal contract are complete and fully inclusive! Text from my Federal Land Patent (App. 58) are as follows: "To Have and to Hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto the said Joseph Holman, and to his heirs and assigns forever."

The Federal Land Patent is a contract from the Congress of the United States and signed by the President. The language of the contract is clear; the immunities of the federal government are transferred to assigns forever. One of the immunities of the Federal Government is that Its property is not taxed by the State. This immunity is demonstrated by the tax bill for the Federal Court House, located in the same Indiana County as my property. The amount of tax due is $0.00 .

The Constitution of the United States prohibits the States from interfering with Federal Contract as per Article I, Section 10.

III. The Court Below Has Exceeded The Authority Of The State Beyond That Which Was Given To Them By An Act Of Congress, January 26th.1847

S 23 enacted 1847 gave Indiana and several other States the right to tax all lands sold by the United States therein, hereafter. The Federal Land Patents in dispute are dated prior to this act and

therefore are excluded from taxation. The case law Indiana Tax Court cited was from States that joined the Union after Indiana and after the enactment of S 23 in 1847 and as such do not apply.

The Court Below cited *Smith v. Dept. of Revenue, 998 P.2d 675, 677 (Or 2000)* However Oregon came into the Union twelve years after the ACT of Congress, January 26, 1847 and thus the assent of congress was already given to tax lands sold within Oregon. It had not been given when the Federal Land Patents in my case were issued.

The Indiana Tax Court also cited *Cass County, Minnesota v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 115 (1998)* (the sale of reservation land to non-Indians rendered the land taxable)

However this cite also does not apply because the Federal Land Patent in my case was not the purchase of Indiana reservation land, but a direct contract with the United States Congress. And as to the question of non-taxable land, it is affirmed that Congress has the authority to bestow taxation immunity upon the Indians or any other sovereign it so chooses to do so, including me. (Minnesota statehood 1858)

The third cite the Lower Court attempted to use was, State v. Nichols, 44 N.W.2d 49, 58 (Iowa 1950) (land became "subject to taxation as soon

as patent was issued by the government"). Once again this cite is useless as a defense against the Federal Land Patent in question. The Land Patent in the Nichols case was issued October 31, 1906; this is some fifty-nine years after the Act of Congress S 23, 1847. Not a single case cite relied upon by the Court Below was applicable to either of the two Federal Land Patents at issue in my case. Both of my Federal Land Patents were issued prior to the assent of Congress 1847.

IV. Not A Single Piece Of Evidence Provided By The State Was Referenced To Or Concurred With By The Lower Court

Not only was none of the case evidence provided by the State used by the Court, but also the court provided the entire defense, with a vested interest in the outcome of the case. Even with the assistance of the Indiana Tax Court, the State was unable to provide case law to support its ruling. Nor was the Court able to provide statutes or Acts of Congress to support the States claim of authority to tax the Federal Land Patents in question. Arbitrary rulings, without foundation is inadequate for the State to prevail. The vested interest of the State prevents an unbiased hearing on this Federal Question!

V. The Record Reflects A Systemic Problem In Indiana Preventing A Fair And Just Hearing On Citizens Complaints Regarding Property Rights And Taxes.

The case record reflects a systemic bias against the citizens in Indiana. The record in this case will show the Allen County Auditors denied me access to State forms necessary to address failures in the taxing system. After denying me access to the forms, employees said they had no knowledge of how a citizen could obtain them or the address or phone number of the State Attorney General as to file them.

Finally after filing the proper forms with the Allen County Auditors Office, they somehow lost six years of filings that never reached the Indiana Tax Board. With letters sent to Allen County Council and the Allen County Commissioners, the threat of filing suit, yielded three of the nine years filed actually made it to the Indiana Tax board.

After a hearing with a tax board officer who had never heard of a Land Patent, all claims were automatically denied. Forcing me to give up my claims or file suit in Indiana Tax Court. My sympathies went out to Honorable Thomas Fisher of the Indiana Tax Court. In 1996 he had the courage to rule Indiana Property Tax

Formula unconstitutional. For nearly a decade Indiana special interest groups have been fighting to writing the new formula to their advantage. The result has been, Indiana still does not have a constitutional tax formula in place. I truly believe Judge Fisher was not prepared to open another can of worms when the last one was still not resolved. And thus he took sixteen months to build a defense for the State, with case law that still does not apply.

But the most distressing action was that of the Chief Justice of the Indiana Supreme Court, Randal T. Shepard, suggesting in an order to a motion I filed, "the filing of an original action against Oetting by the Indiana State Bar Association pursuant to Ind. Admission and Discipline Rule 24." (App. 20) Since the Indiana Tax Court had already ruled that I was in good standing, I perceived this as a veiled threat to me personally if I proceeded in the Indiana Supreme Court. I did anyway, and his Court denied my petition to transfer jurisdiction. It is clear that even Indiana's Supreme Court has an unfair bias in favor of the State. By refusing to hear, a difficult case for which there are Constitutional, Federal and statutory challenges, the Indiana Supreme Court has stopped a legal challenge to the State. And created a bias court in a case in which the court has a vested interest. It is impossible for me to receive a fair and unbiased hearing within the State of Indiana. I call upon the highest Court in my country to exercise its

supervisory power and assure the American principal, that every citizen is entitled to a fair and just day in court.

CONCLUSION

This case loaded with Acts of Congress ignored, Federal and Constitutional questions unanswered, and judicial bias, cries out for the United States Supreme Court's Intervention! A petition for writ of certiorari should be granted!

Respectfully submitted,

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APPENDIX

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IN THE INDIANA TAX COURT

KEAG FAMILY LIMITED PARTNERSHIP,

Petitioner,
v. Cause No. 02T10-9906-TA-145

STATE BOARD OF TAX COMMISSIONERS,

Respondent.

ON APPEAL FROM A FINAL DETERMINATION
OF
THE STATE BOARD OF TAX COMMISSIONERS

NOT FOR PUBLICATION
September 17, 2001

FISHER, J.

KEAG Family Partnership (KEAG), appeals six final determinations of the State Board of Tax Commissioners (State Board) finding that KEAG owed property taxes for the 1997 and 1998 tax years on three separate parcels. In its original tax appeal, KEAG raises these issues: Whether its property tax liabilities are void because they were assessed and collected under a property tax system that has been declared unconstitutional by Indiana Courts?

Whether its parcels are exempt from property taxation because they are within the protection of federal land patents?

FACTS AND PROCEDURAL HISTORY

KEAG contends that in 1997 and 1998, the State Board improperly assessed a property tax liability against three of its parcels in Allen County, Indiana. More specifically, while the State Board found that Parcels 95-2564-0186, 95-2564-0196,

and 18-0009-0006 each had assessed values of $14,940, $1,400, and $14,670 respectively (Pet'r Ex. F, Ans. to Resp't Motion), KEAG maintains that each of these parcels should have an assessed value of zero.

Consequently, KEAG filed an original tax appeal with this Court on June 11, 1999, challenging all six final determinations. See footnote The Court heard oral arguments on April 27, 2000. Additional facts will be supplied as necessary.

Standard of Review

This Court gives great deference to final determinations of the State Board. Wetzel Enters. Inc. v. State Bd. of Tax Comm'rs, 694 N.E.2d 1259, 1261 (Ind. Tax Ct. 1998). Accordingly, this Court will reverse State Board final determinations only when they are unsupported by substantial evidence, are arbitrary or capricious, constitute and abuse of discretion, or exceed statutory authority. Id. The taxpayer bears the burden of showing the invalidity of the State Board's final determination. Clark v. State Bd. of Tax Comm'rs, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998).

Discussion

I. Constitutionality of KEAG's Property Tax Assessments Under Indiana's Property Tax System

KEAG's first argument is that the 1997 and 1998 assessments on each of its three parcels are null and void because Indiana's system of taxing tangible property has been declared unconstitutional. KEAG is mistaken.

In 1998, the Indiana Supreme Court affirmed this Court's ruling that "the existing cost schedules . . . violate the Property Taxation Clause of the Indiana Constitution." State Bd. of Tax Comm'rs v. Town of St. John, 702 N.E.2d 1034, 1043 (Ind. 1998). That same year, however, this Court declared that "[r]eal property must still be assessed, and, until the new regulations are in place, must be assessed under the present system." Whitley Prods., Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1121 (Ind. Tax Ct. 1998) review denied; see also Town of St. John v. State Bd. of Tax Comm'rs, 729 N.E.2d 242, 246, 251 (Ind. Tax Ct. 2000) (ordering real property in Indiana to be reassessed under constitutional regulations as of March 1, 2002 and providing that until then "real property tax assessments shall be made in accordance with the current system"). Consequently, the State Board did not err in determining that KEAG's parcels were taxable under Indiana's present system of property taxation.

II. Taxability of Land Issued Pursuant to Federal Land Patents

KEAG also challenges the State's right to assess taxes on its parcels because it was land that it acquired pursuant to a federal patent. Again, KEAG is mistaken.

Under the Property Clause of the United State's Constitution See footnote , Congress has the authority to regulate and dispose of federal public lands. This authority over federal lands, which Congress determines whether or not to exercise, is plenary. 63C Am.Jur.2d Public Lands §7 (1997) (footnotes and citations omitted). Consequently, until the issuance of a patent that conveys title, the United State has the fee of public lands and has broad management authority. Id.

As the highest evidence of title, a patent is a deed by which the government conveys title to public lands. Id. at §48. A patent must be issued in order for the fee to public lands to pass from the government. Id. A patent is intended to quiet title to, and secure the enjoyment of, the land for the patentees and their successors. Id.

KEAG argues that because land held by the federal government is exempt from taxation, Indiana Code §6-1.1-10-1, one of the "immunities" granted to it in its patent is the federal government's immunity from taxation. In a case recently decided in our sister state of Oregon, however, the Oregon Supreme Court held that "the United States government cannot confer its

privileges and immunities upon patent grantees." Smith v. Dept. of Revenue, 998 P.2d 675, 677 (Or. 2000), cert. denied, 531 U.S. 1013 (2000). Rather, "the rights, privileges, and immunities recited in the patent are those appended to or attached to the land, not those inherent in the federal government." Id. (emphasis added, internal quotation marks omitted). Other state courts have also found that land issued under federal land patents is taxable. See State v. Nichols, 44 N.W.2d 49, 58 (Iowa 1950) (land became "subject to taxation as soon as patent was issued by the government"). See also Cass County, Minnesota v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 115 (1998) (the sale of reservation land to non-Indians rendered the land taxable).

Thus, as a quitclaim deed, a land patent conveys whatever interest the government has in the soil and the land. KEAG is entitled to all rights, privileges, immunities that attach to the land; it is not entitled to all rights, privileges, and immunities that attach to the federal government. KEAG's property was originally tax-exempt because the federal government owned it. Once the government issued its patent, however, the title transferred ownership, free and clear, from the federal government to the assignee. KEAG, as the present assignee, is not a tax-exempt entity. Accordingly, this Court finds that the State Board did

not err in determining that KEAG's parcels were taxable for the years 1997 and 1998. See footnote

CONCLUSION

For the aforementioned reasons, this Court AFFIRMS the final determinations of the State Board of Tax Commissioners.

Footnote: The State Board subsequently motioned this Court for summary judgment, asserting that because KEAG's general partner, who is not an attorney, filed the appeal and represented KEAG in court, the Court lacks subject matter jurisdiction to hear the case. In an order issued simultaneously with this opinion, the Court denies the State Board's motion.

Footnote: U.S. C onst., art. IV, §3.

Footnote: KEAG also alleged in its original tax appeal that it was entitled to damages under Indiana Code §6-1.1-15-18. Having determined that KEAG fails in its contentions that it is exempt from property tax, the issue of its entitlement to damages under Indiana Code §6-1.1-15-18 is rendered moot.

IN THE
INDIANA TAX COURT
CASE NO. 02T10-9906-TA-145

KEAG FAMILY LIMITED PARTNERSHIP,

Petitioner,

v.

STATE BOARD OF TAX COMMISSIONERS,

Respondent.

JUDGMENT ENTRY PURSUANT TO IND. TRIAL RULE 58

The Petitioner, KEAG Family Limited Partnership, appearing by a designated employee under Indiana Small Claims Rule 8©, and the Respondent, the State Board of Tax Commissioners, by counsel, appeared before the court for trial. For reasons stated in its opinion, the Court now AFFIRMS the final determinations of the State Board of Tax Commissioners. The parties shall bear their own cost.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be and is entered in favor of the State Board and against KEAG Family Limited Partnership.
SO ORDERED this 17th day of September, 2001.

"s/Thomas G. Fisher"
Thomas G. Fisher, Judge
Indiana Tax Court

PETITIONER APPEARING PRO SE:
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Fort Wayne, IN

ATTORNEYS FOR RESPONDENT:
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FILED
Sep 17,2001
Brian Bishop
CLERK OF THE SUPREME COURT
COURT OF APPEALS AND TAX COURT

IN THE INDIANA TAX COURT

KEAG FAMILY LIMITED PARTNERSHIP,

Petitioner,

v. Cause No. 02T10-9906-TA-145

STATE BOARD OF TAX COMMISSIONERS,

Respondent.

ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

NOT FOR PUBLICATION
September 17, 2001

FISHER, J.

KEAG Family Partnership (KEAG), appeals the final determinations of the State Board of Tax Commissioners (State Board) finding that it owed property taxes for the 1997 and 1998 tax years. The State Board subsequently motioned this Court for summary judgment, asserting that because a non-attorney filed the appeal and represented KEAG in court, the Court lacks subject matter jurisdiction to hear the case. For the reasons stated below, the State Board's motion for summary judgment is DENIED.

Facts and Procedural History

KEAG contends that in 1997 and 1998, the State Board improperly assessed property tax liabilities against three of its parcels in Allen County, Indiana. More specifically, while the State Board found that Parcels 95-2564-0186, 95-2564-0196,

and 18-0009-0006 each had assessed values of $14,940, $1,400, and $14,670 respectively (Pet'r Ex. F, Ans. to Resp't Motion, filed December 2, 1999). KEAG maintains that each of these parcels should have an assessed value of zero.

Consequently, KEAG filed an original tax appeal with this Court on June 11, 1999, challenging all six final determinations. Gary L. Oetting (Oetting), KEAG's general partner, signed and filed KEAG's notice of claim. Oetting is not an attorney.

On October 26, 1999, the State Board filed a motion for summary judgment. The Court heard oral arguments on April 27, 2000. Additional facts will be supplied as necessary.

Standard of Review

Summary judgment is proper only when no genuine issues of fact exist and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); see also- Dana Corp. v. State Bd. of Tax Comm'rs, 694 N.E.2d 1244, 1246 (Ind. Tax Ct. 1998). The Court must liberally construe all evidence in favor of the non-moving party and resolve any doubt against the moving party. See Knauf Fiber Glass, GmbH v. State Bd. of Tax Comm'rs, 629 N.E.2d 959, 961 (Ind. Tax Ct. 1994).

Discussion

The parties do not dispute the fact that a non-attorney, Oetting, has filed this original tax appeal on behalf of KEAG. The State Board asserts, however, that Oetting's "representation not only constitutes the unauthorized practice of law, but . . . also deprives this Court of subject matter jurisdiction over this entire matter because any filing by a non-attorney is a nullity in law. . . ." (Resp't Mem. in Support of Motion for Summary Judgment at 1). The State Board relies on Indiana Small Claims Rule 8(C), which states in relevant part:

> In unassigned claims not exceeding one thousand five hundred dollars ($1,500), a sole proprietor or partnership may appear by a designated full-time employee of the business in the presentation or defense of claims arising out of the business.

The State Board contends that KEAG's claim exceeds $1,500. (Resp't Mem. in Support of Motion for Summary Judgment at 3). The State Board also contends that KEAG's claim for refunds of property taxes paid for 1997 and 1998 do not "arise out of the business" of KEAG.

The State Board's contentions are erroneous. First, the State Board relies on KEAG's notice of claim, which seeks a total refund in the amount of "$12,411.81, plus statutory interest and attorneys fees." (Resp't Designation of Facts and Evidence,

Ex. D). What the State Board fails to recognize, however, is that that claim is based on a refund of taxes on the three aforementioned parcels not only for 1997 and 1998, but for 1994, 1995, and 1996 as well.

When KEAG filed its original tax appeal, it sought refunds on property taxes for tax years 1994 through 1998 on the three subject parcels. It appears from the record, however, that while KEAG filed separate appeals on each of the three parcels with Allen County for all five years, only the appeals for 1997 and 1998 were forwarded to the State Board for final determinations. Because the Allen County Auditor failed to forward the 1994, 1995, and 1996 petitions to the State Board, however, there were no final determinations for those years from which KEAG could appeal. Consequently, this Court has no jurisdiction over those "lost" years, and is therefore unable to grant any relief thereon. See State Bd. of Tax Comm'rs v. Mixmill Mfg. Co., 702 N.E.2d 701, 703-704 (Ind. 1998); State Bd. of Tax Comm'rs v. L.H. Carbide Corp., 702 N.E.2d 706, 707 (Ind. 1998). Rather, KEAG's remedy for those years lies in a mandamus action with a court of general jurisdiction. See Carbide, 702 N.E.2d at 707.

By eliminating the claim amounts for 1994, 1995, and 1996, the amount of KEAG's overall claim is greatly reduced. Indeed, for 1997, KEAG seeks $1,381.24 on Parcel 95-2564-0186, $129.44 on Parcel 95-2564-0196, and $929.68 on Parcel

18-0009-0006. For 1998, KEAG seeks $1,377.30 on Parcel 95-2564-0186, $129.08 on Parcel 95-2564-0196, and
$983.64 on Parcel 18-0009-0006. Each of these claims is under $1,500 and well within the purview of Small Claims Rule
8(C). See footnote

In addition, the State Board's notion that KEAG's challenge of property tax liability is not one "arising out of its business" is without merit. "Limited partnerships are a creature of statute, the primary purpose of which is to permit a form of business enterprise, other than a corporation, in which persons can invest money without being personally liable for all partnership debts." Kelsey v. Kelsey, 714 N.E.2d 187, 190 (Ind. Ct. App. 1999). A family limited partnership is simply a limited partnership among members of a family.

Family limited partnerships have often been formed to hold family compounds, businesses, rental properties, and, in some cases, marketable securities. Here, the KEAG's property tax liability challenges are based on three parcels owned by the KEAG family limited partnership. Issues that relate to partnership property necessarily "arise out of the business" of the partnership. As such, the property tax liability challenges that KEAG raises here "arise out of the business" of KEAG.

CONCLUSION

For the foregoing reasons, the Court finds that KEAG's representation by Oetting is proper under Small Claims Rule 8(C).
This Court therefore DENIES the State Board's motion for summary judgment.

Footnote: The State Board, in an effort to save itself, argues that the sum of taxes in controversy on all three parcels
should be controlling in determining the claim amount. In other words, the State Board argues that KEAG's claim is
$4,930.38 ($1,381.24 + $129.44 + $929.68 + $1,377.30 + $129.08 + $$983.64).
This argument flies in the face of the language of Indiana Code § 33-3-5-12 and Indiana Tax Court Rule 16 which
generally provide that this Court reviews small claims on a per year, per final determination basis. The fact that the
six final determinations were grouped together for presentation to this Court will not serve as a means to throw the
taxpayer out on a technicality.

IN THE
INDIANA TAX COURT
CASE NO. 02T10-9906-TA-145

KEAG FAMILY LIMITED PARTNERSHIP,

Petitioner,

v.

STATE BOARD OF TAX COMMISSIONERS,

Respondent.

JUDGMENT ENTRY PURSUANT TO IND. TRIAL RULE 58

The Petitioner, KEAG Family Limited Partnership, appearing by a designated employee under Indiana Small Claims Rule 8©, and the Respondent, the State Board of Tax Commissioners, by counsel, appeared before the court for trial. For reasons stated in the order issued on this date, the Court DENIES Respondents Motion for Summary Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary be and is denied against the Respondent in this original tax appeal. This case shall go forward to be determined on its merits for tax years 1997 and 1998 in an opinion issued simultaneously with this order.

SO ORDERED this 17th day of September, 2001.

"s/Thomas G. Fisher"
Thomas G. Fisher, Judge
Indiana Tax Court

IN THE
INDIANA COURT OF SUPREME COURT

Case No. 49T10-9906-TA-145

KEAG FAMILY LIMITED PARTNERSHIP,

Petitioner,

v.

STATE BOARD OF TAX COMMISSIONERS,

Respondent.

MOTION FOR CLARIFACATION OF PRO SE REPRESENTATION

Petitioner, KEAG FAMILY Limited Partnership, files a motion for clarification of Pro Se representation by Gary L. Oetting, first general partner of KEAG Family Limited Partnership. It is the intention of the Partnership to file a Petition for Review with the Indiana Supreme Court in the above captioned cause. Mr. Oetting was the representative That filed the original petition with the tax board and the Pro Se Attorney in Tax Court. The State Tax Board in Indiana Tax Court challenged my representation. Honorable Thomas G. Fisher ruled my representation was proper under small

claims rule 8c. (Copy of Judgment enclosed). The question in need of clarification is, whether my representation of my family can continue with the Petition of Review with the Indiana Supreme Court? Will I be in good standing in your court? Since the final day to file the Petition for Review is October 17th, 2001, there is some urgency in knowing the answer to this question.

Respectfully submitted,

KEAG Family Limited Partnership

By: "s/Gary L.Oetting"
Gary L. Oetting
Pro Se

FILED
Sep 26, 2001
Brian Bishop
CLERK OF THE SUPREME COURT
COURT OF APPEALS AND TAX COURT

IN THE INDIANA SUPREME COURT

KEAG FAMILY LIMITED PARTNERSHIP

petitioner,

Tax Court cause no. 02T10-9906 -TA-145

STATE BOARD OF TAX COMM'S

Respondent.

ORDER

On September 17, 2001, the Tax Court issued an unpublished memorandum decision affirming a final determination of the State Board of Tax Commissioners in connection with the above-captioned proceeding. On that same date, the Tax Court also issued an order denying a separate motion for summary judgment filed by the State Board on the question of whether Gary L. Oetting was engaged in the unauthorized practice of law in his representation of the taxpayer, a limited partnership of which Oetting is a general partner. In short, although the Tax Court's final ruling was unfavorable to the taxpayer, it did

allow Oetting to act as the taxpayer's representative.

Oetting has now filed a "Motion For Clarification Of Pro Se Representation" with this Court. In the motion, Oetting asserts that he would like to file, on behalf of the limited partnership, a petition seeking Supreme Court review of the memorandum decision of the Tax Court, pursuant to Ind. Appellate Rule 63. The motion ask for a "clarification" about whether he would be "in good standing" with this Court.

Oetting ask, in effect, for a predetermination of a legal issue raised below and possibly to be raised again by the State Board in response to any petition for review filed by Oetting. Further, the issue could conceivably be raised by the filing of an original action against Oetting by the Indiana State Bar Association pursuant to Ind. Admission and Discipline Rule 24.

It would be premature to address this issue on the basis of Oetting's brief motion. The "Motion For Clarification Of Pro Se Representation" is accordingly denied.

The Clerk is directed to send a copy of this order to Gary L. Oetting; to the KEAG Family Limited Partnership; to the Hon. Thomas G. Fisher; and to all counsel of record.

Done at Indianapolis, Indiana this 26th day of September, 2001.

"s/Randall T. Shepard"
Chief Justice of Indiana

KEAG FAMILY LIMITED PARTNERSHIP
GARY L. OETTING
2816 LOWER HUNTINGTON RD.
FORT WAYNE, IN 46809

Cause Number
02T10-9906-TA-00145
Lower Court Number:
N/A

KEAG FAMILY LIMITED PARTNERSHIP

v.

STATE BOARD OF TAX COMM.

You are hereby notified the SUPREME COURT has on this day 2/04/02

THIS MATTER HAS BECOME BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER JURISDICTION FOLLOW THE ISSUANCE OF A DECISION BY THE INDIANA TAX COURT. THE PETITION WAS FILED PURSUANT TO APPELLATE RULE 57. THE COURT HAS REVIEWED THE DECISION OF THE INDIANA TAX COURT, ANY RECORD ON APPEAL THAT WAS SUBMITTED HAS BEEN MADE AVAILABLE TO THE COURT FOR REVIEW, ALONG WITH ANY AND ALL BRIEFS THAT MAY HAVE BEEN FILED IN THE INDIANA TAX COURT. ALL THE MATERIALS FILED IN

CONNECTION WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE PETITION. EACH PARTICIPATING MEMBER HAS HAD THE OPPORNTUNITY TO VOICE THAT JUSTICE'S VIEWS ON THE CASE IN CONFERENCE WITH THE OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER OF JURISDICTION.

RANDALL T. SHEOARD, CHIEF JUSTICE
ALL JUSTICES CONCUR

WITNESS my name and the seal of said court
This 4th day of FEBRUARY. 2002

"s/Brian Bishop"
CLERK SUPREME COURT
COURT OF APPEALS
AND TAX COURT

Posted Date: May 31, 1996

[Majority Opinion]

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IN THE INDIANA TAX COURT

Town of St. John, et al., James K. Gilday, Dimple Clarine Shelton and William E. Wise

v.

State Board of Tax Commissioners

FISHER, Justice

STATEMENT OF THE CASE

The Town of St. John, James K. Gilday, Dimple Clarine Shelton, and William E. Wise (the Taxpayers) challenge the constitutionality of Indiana's statutory system of real property taxation.

ISSUE

The Taxpayers have raised four issues for the court's consideration. Because the court finds that one of those issues is

dispositive, it will address that issue only:

Whether Article 10, § 1 of the Indiana Constitution requires that all real property assessments be based on market value.

BACKGROUND

In Indiana, real property(1) is assessed on the basis of its "true tax value." IND. CODE 6- 1.1-31-6(c). "?[T]rue tax value does not mean fair market value(2) . . . [but rather] the value determined under the rules of the state board of tax commissioners." Id. (footnote added).

The State Board of Tax Commissioners (the State Board) is an administrative agency created by the Indiana legislature. IND. CODE 6-1.1-30-1. It is required by law to: "(1) interpret the property tax laws of this state; (2) instruct property tax officials about their taxation and assessment duties; and (3) see that all property assessments are made in the manner provided by law." IND. CODE 6-1.1-35-1. Implicit in this grant of power is the State Board's authority to effectuate the regulatory scheme outlined in Indiana's property tax statutes. See Miller v. Gibson County Solid Waste Management Dist., 622 N.E.2d 248, 259 (Ind. Tax 1993). Accordingly, the State Board has promulgated regulations for determining the "true tax value" of real property.

These regulations, collectively known as the Indiana Assessment Manual, are found in the Indiana Administrative Code, Title 50, Article 2.1 (Title 50).

Under Title 50, the "true tax value" of non-agricultural land (i.e., commercial, industrial, and residential land) is determined by a county land valuation commission and subsequently approved by the State Board. 50 I.A.C. 2.1-2-1. See also IND. CODE 6-1.1-4-13.6. Each county has its own land valuation commission to collect and analyze sales data for the county and, on the basis of that information, it determines the values of all the land contained therein. 50 I.A.C. 2.1-2-1. After the values have been approved by the State Board, they are compiled in a County Land Valuation Order. In theory, the "true tax value" of non-agricultural land approximates its market value.

The "true tax value" of agricultural land is determined by a county agricultural land advisory committee. See IND. CODE 6-1.1-4-13. Each county has its own county agricultural land advisory committee. Unlike the county land valuation commission, however, it does not collect and analyze sales data for agricultural land within the county. Rather, it determines the "true tax value" of agricultural land by taking a base rate of $495 per acre and then making adjustments up or down to reflect the soil's

capacity to produce crops. 50 I.A.C. 2.1-2-2.(3) As a result, the "true tax value" of agricultural land is an attempt to approximate a value based in part on its earning capacity.

The "true tax value" of an improvement(4) is calculated by the "reproduction cost" of the item, less any physical depreciation or obsolescence depreciation to which it is entitled. 50 I.A.C. 2.1-5-1. Reproduction cost is defined as the "whole-dollar cost of reproducing the item." 50 I.A.C 2.1-3-3. The "reproduction cost" of an improvement, however, is not the actual cost of reproducing the item. Rather, it is the "reproduction cost" as specified in the State Board's "cost schedules." See 50 I.A.C. 2.1-3-3; 50 I.A.C. 2.1-3-5; 50 I.A.C. 2.1-4-5.(5) Thus, the "true tax value" of an improvement does not necessarily approximate its market value.

In summary, "true tax value" is a figure which is produced by the application of the State Board's mechanical rules and formulas set forth in Title 50. See also Jerrold F. Janata, ed., Property Taxation 159 (2d ed. 1993). Everything needed to calculate "true tax value" is set forth in Title 50; evidence of value external to Title 50 is irrelevant. As a result, evidence of an improvement's actual reproduction cost or evidence of the actual market value of land is irrelevant under the "true tax value" system.

FACTS AND PROCEDURAL HISTORY

This case arose on September 3, 1993, when the Town of St. John(6) filed an original tax appeal against the State Board.
Later, James K. Gilday, Dimple Clarine Shelton, and William E. Wise, each of whom owns real property in Marion County,
Indiana, also filed original tax appeals against the State Board. Because each of these petitioners raised the same issue, the court consolidated their cases. See Russell v. Johnson, 220 Ind. 649, 658-59, 46 N.E.2d 219, 223 (1943) (quoting
Lumiansky v. Tessier, 213 Mass. 182, 188-89, 99 N.E. 1051, 1053-54 (1912)).

The Taxpayers argue that the "true tax value" system is inequitable because its application yields different "true tax values" for properties with comparable market values. The Taxpayers assert that for the 1989 general reassessment, some properties were assessed with "true tax values" equal to their market values, others were assessed with "true tax values" in excess of their
market values, and still others were assessed with "true tax values" well below their market values. Thus, they contend that the
State Board's "true tax value" system violates Article 10, § 1 of the Indiana Constitution which states:

The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall

prescribe regulations to secure a just valuation for taxation of all property, both real and personal.

IND. CONST. art. 10, § 1(a) (emphasis added). Furthermore, the Taxpayers contend that the term "just value" (or "just valuation" as it is used in Article 10, § 1) is synonymous with the term market value. Indeed, they maintain that market value is the only meaningful standard by which the equality and uniformity of real property assessment and taxation can be measured.

The State Board claims, however, that the "just value" of real property is not necessarily its market value; rather it is a value that is determined through the use of any rational method of property valuation. The State Board explains that a method of property valuation is rational when it places identical values on properties that are "physically identical and used identically." Post- Trial Brief of Respondents on Constitutional Issues (filed Dec. 4, 1995) at 15. Thus, the State Board maintains that although Indiana's "true tax value" system values real property on a basis other than market value, it values physically identical properties identically thereby meeting the constitutional mandate that property be assessed according to its "just value."

This court must therefore determine the meaning of the language in Article 10, § 1 as it applies to the assessment and taxation of

real property.(7)

DISCUSSION AND ANALYSIS

When a court is called upon interpret a constitutional provision, it must seek the meaning intended by both those who framed it and those who ratified it. Bayh v. Sonnenburg, 573 N.E.2d 398, 412 (Ind. 1991), reh'g denied, cert. denied, 502 U.S. 1094, 112 S.Ct. 1170, 117 L.Ed.2d 415-16 (1992). To accomplish this, the court examines "the language of the text in the context of the history surrounding its drafting and ratification, the purpose and structure of [the] constitution, and case law interpreting the specific provision[]." Indiana Gaming Comm'n v. Moseley, 643 N.E.2d 296, 298 (Ind. 1994).

A. THE HISTORY AND THE PURPOSE OF ARTICLE 10, § 1

The portion of Article 10, § 1 at issue today was adopted by the Constitutional Convention in 1851. The Convention was called to address the various economic problems associated with the development of Indiana's infrastructure. See Lafayette, M. & B.R.R. v. Geiger, 34 Ind. 185, 205 (1870). In his annual message to the General Assembly in January of 1848, Governor James Whitcomb explained that one of these economic problems was "the great disparity between the amount of the [State's]

debt, and the ability of the State for its discharge by means of taxation." House Journal, 32d sess. 127 (1848). Whitcomb attributed this disparity, in part, to the inadequacies of the existing property tax system:

A slight examination of our . . . system will be sufficient to demonstrate its susceptibility of improvement. Under its workings, it is quite manifest that a large amount of the invisible wealth of the community, such as corporation and other stock, cash on hand, or at interest, and the more portable and valuable kind of personal property, &c., is not found upon assessment rolls. This description of taxables is generally owned by those best able to pay, and their non-assessment leaves the burden of taxation so much the heavier on property, which is visible, and especially on lands which cannot escape notice and scrutiny, &c., which the true policy of our State requires should not be visited with disfavor.

House Journal, 32d sess. 125 (1848).

The substance of Article 10, § 1 was first proposed at the Convention by Delegate Daniel Read of Monroe County. His remarks indicate that his intent for the proposing the provision was to insure that all property wealth was taxed so that "the burdens of supporting government should fall in just proportions upon those who enjoy its benefits." 1 Report of the Debates

and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana, 1850 at 946 [hereinafter Debates]. As Read explained:

There is manifest injustice in permitting property, in the hands of the wealthy, which ought to be taxed as other property, to escape taxation altogether, or to be taxed only on a very small part of its value.

* * *

It is to me a strange doctrine, that, in this country, a man may invest his money in any kind of stocks, and claim for it an exemption from taxation. It runs athwart all my notions of justice and right, that any one may live in our midst -- may enjoy the full protection of Government -- invest his money in the safest funds known in the country, and yet entirely escape taxation. He may, according to this doctrine, have the best fortune in Indiana, and pay on it not a dime to support the Government which surrounds him with safety.

Id. Accordingly, Read proclaimed that "no provisions are more proper for a Constitution, than

those requiring equality of assessment for purposes of taxation. The duty of the Legislature to devise a system which will secure

such equality and which will cause all the property of the State to be brought under taxation, should be held forth in the Constitution." Id. at 941.

The remarks of other delegates at the Convention further indicate that the purpose of Article 10, § 1 was to guarantee that property wealth in the form of stocks and bonds would be taxed equally and uniformly with property wealth in the form of real estate. Delegate Borden of Allen County stated:

Could all the stocks now held in the State, bear their just proportion of taxation, it would relieve the agricultural interests of the State from a large amount of taxation, which they are now compelled to bear. It is easy for assessors to ascertain the amount of property belonging to men living on small farms, with but little means -- and such property is always taxed at its full value. This, however, has not been the case with the more wealthy capitalists of the State. If there was a just and equal system of taxation in force, I have no doubt that [an additional] three to five hundred thousand dollars would be brought into the State treasury annually [from taxing stocks and bonds].

Id. at 945.(8) Delegate Bascom of Wells County stated, "I take the ground that in fixing upon taxable property of this State we should include bank stock and property. . . .There is no inducement for a man to invest his money in real estate in this country,

on account of the heavy tax -- and he has only to invest his money in the stock of the Bank, and he is entirely free from taxation." Id. at 948-49. Similarly, Delegate McFarland of Tippecanoe County explained, "I am satisfied from the experience of the past . . . that there should be a uniform mode of taxation. . . . Scattered over this State . . . is a large amount of property, which there is no more propriety in exempting from taxation, than there is in exempting the private property of individuals." Id. at 949.

From these remarks, the court concludes that when Article 10, § 1 was adopted and later ratified as part of the 1851 Indiana Constitution, the Indiana property tax was intended to be a tax on property wealth. Thus, the great object of Article 10, § 1 was to insure that property taxes were imposed on all forms of property wealth equally and uniformly. In other words, the framers of Article 10, § 1 intended that each taxpayer's property wealth bear its proportion of the overall property tax burden.

In reviewing the historical debate surrounding the adoption of Article 10, § 1, the court notes that the framers never explicitly stated that real property was to be assessed on the basis of its market value. Consequently, the court is left with no direct indication as to what they intended the "just value" of property to be. The court's inquiry must therefore continue with an

examination of early Indiana Supreme Court cases which construe and apply Article 10, § 1. See Collins v. Day, 644 N.E.2d 72, 77 (Ind. 1994).

B. CASE LAW INTERPRETING ARTICLE 10, § 1

In the years following the adoption of Article 10, § 1, the Indiana Supreme Court recognized that the object of the Convention was to devise a property tax system which would distribute the burdens of taxation equally and uniformly. Bright v. McCullough, 27 Ind. 223, 230 (1866). "To this end the primary principle adopted is that taxes shall be assessed on the property liable thereto, according to its just value." Id. Consequently, the Supreme Court recognized that there was one, and only one, standard by which all property wealth was to be measured -- its "just value." See id.

But what is "just value?" It has been said that the term is the equivalent of "correct," "honest," or "true" value. State ex rel. Lewis v. Smith, 158 Ind. 543, 563, 63 N.E. 25, 63 L.R.A. 116 (1902) (Dowling, J., dissenting). Furthermore, its use is "intended to guard [against] an arbitrary valuation of property by the State." Id. Such a definition is, however, not particularly helpful, as it begs the question "what is value?"

The fundamental rule of real property taxation is that the value of the property is the basis of taxation and the standard of

valuation "is its present actual market value, which is variously described as its ?fair market value,' its ?cash value,' its ?true value in money,' its ?actual value as defined by market value,' [or] its ?full cash value.'" 72 Am.Jur.2d State and Local Taxation

§ 759 (1974). Market value is defined as "the price which [a piece of property] might be expected to bring if offered for sale in a fair market." Black's Law Dictionary 971 (6th ed. 1990). See also Webster's Third New International Dictionary 1383 (1981).

Some states have declared that the "value," "value in money," "full cash value," and "full value" of real property is its market value. See Union Oil Co. v. County of Ventura, 41 Cal.App.3d 432, 436, 116 Cal.Rptr. 13, 16 (1974); Imperial Palace, Inc. v. State, 108 Nev. 1060, 1063, 843 P.2d 813, 816 (1992); People ex rel. Parklin Operating Corp. v. Miller, 287 N.Y. 126, 129, 38 N.E.2d 465, 466 (1941); State ex rel. Cunningham v. Thomas, 16 Utah 86, 90, 50 P. 615, 615-16 (1897). Other states have held that the "just value" of real property is its market value. See Walter v. Schuler, 176 So.2d 81, 85-86 (Fla. 1965); Crow v. Bd. of Equalization, 104 Idaho 681, 688, 662 P.2d 1125, 1132 (1983); Alfred J. Sweet, Inc. v. City of Auburn, 134 Me. 28, 31, 180 A. 803, 804 (1935). While Indiana's Supreme Court has not explicitly equated "just value" with

market value, it has implicitly acknowledged that the terms are equivalent.

For example, in 1866, the Indiana Supreme Court used Article 10, § 1 to invalidate a statute which imposed a tax of one cent on each acre of taxable land for road purposes. Bright, 27 Ind. at 233. In so doing, it declared that under Article 10, § 1, all property taxes, whether they be for state, county, township, or road purposes, must be ad valorem. Id. Consequently, property taxes must be levied on the value of property, and not as a specific tax on a fixed amount, without regard to the property's value. Id. at 228. Later, the Indiana Supreme Court reiterated that "all taxation, in this State, is upon values, and no[t] upon amounts." Florer v. Sheridan, 137 Ind. 28, 33-34, 36 N.E. 365, 366 (1894). In Florer, the Supreme Court upheld a statute which provided that the "just value" of taxable credits was to be determined by subtracting the bona fide indebtedness from the gross amount of the notes. Id. at 41, 36 N.E. at 369. As the Supreme Court explained, Article 10, § 1 "requires that property, wealth, substantial values, shall be taxed, but not imaginary values. As against an insolvent maker, the true value in money of the credit can only be taxed and so it is where a man has both credits and debts . . ." Id. at 42, 36 N.E. at 369.

In another case, the Indiana Supreme Court held that "[i]t is manifest that the taxable value of property is its fair cash value, a fair cash value being the market or usual selling price." Willis, Auditor v. Crowder, 134 Ind. 515, 517, 34 N.E. 315, 316 (1893). The Supreme Court then determined that it was inappropriate to measure the market value of property by merely comparing it with similar property in kind and character. Id. at 517-18, 34 N.E. at 316. As the Supreme Court explained:

> This is not a finding of [] market value . . . The comparison stated may be correct, and at the same time neither class of the property have [sic] a market value. This finding is not susceptible of the construction that it states the actual value of the property.

Id. at 518, 34 N.E. at 316.

Similarly, the Indiana Supreme Court later declared that when valuing property at its "true cash value," "[i]t is no answer to say that [] taxes are imposed upon an equal valuation with other lands, for, if so, that only proves that none of them are assessed at their true cash value." Smith v. Stephens, 173 Ind. 564, 568, 91 N.E. 167, 169 (1910). Later, the Indiana Supreme Court held that it was improper to determine the "just value" of a particular piece of property on the basis of another property's "true cash

value," and not its own. Finney v. Johnson, 242 Ind. 465, 469-70, 179 N.E.2d 718, 719-20 (1962). In Finney, the Indiana Supreme Court held that a statute fixing the value of household goods at an amount equal to five percent of the assessed valuation of the improvements in which they were kept violated Article 10, § 1. Id.

These judicial decisions, particularly those contemporaneous with the adoption of Article 10, § 1 and practiced and acquiesced in for a period of years, are accorded strong and superseding precedential value in determining that the term "just value" means market value. See Collins, 644 N.E.2d at 77. Indeed, these cases indicate that the Indiana Supreme Court has recognized for over a century that Indiana's property tax is ad valorem. See also Eakin v. State ex rel. Capital Imp. Bd. of Managers, 474 N.E.2d 62, 69, n.1 (Ind. 1985) (Hunter, J., dissenting) (explaining that the Indiana Supreme Court has uniformly limited Article 10, § 1 solely to ad valorem property taxes) (citing Lutz v. Arnold, 208 Ind. 480, 193 N.E. 840, 849 (1935); Gafill v. Bracken, 195 Ind. 551, 145 N.E. 312 (1924); and Thomasson v. State, 15 Ind. 449, 451 (1860)). The touchstone in the assessment of real property for ad valorem tax purposes is the market value of the property. See Janata, Property Taxation at 167 ("[o]ne way or another, an assessor must refer to market value in assessing real property for ad valorem purposes").

C. LEGISLATIVE INTERPRETATION

Lending additional support to the court's holding is the legislature's long-standing interpretation that the "just value" of real property is its market value. In 1852, one year after the adoption of the Constitution and Article 10, § 1, the Indiana legislature enacted a statute which read:

Sec. 49. The appraiser shall, upon actual view make a true valuation of all lands together with the improvements and buildings thereon, or affixed thereto, at their full value in money, as he would appraise the same in payment of a just debt due from a solvent debtor . . .

Ind. Rev. Stat., 1852, Chapter 6, Assessment of Taxes, Section 49. The legislature did not, however, provide a statutory definition for the term "full value in money." Consequently, the court will give the term its plain, ordinary, and usual meaning as found in a dictionary. See Johnson County Farm Bureau Coop. v. Indiana Dep't of State Revenue, 568 N.E.2d 578, 581 (Ind. Tax 1991) aff'd 585 N.E.2d 1336 (Ind. 1992). Dictionaries published proximate to the adoption of Article 10, § 1 define the word "value" as the "price, worth . . . price equal to the worth of the thing bought." Walker's Critical Pronouncing Dictionary

and Expositer of the English Language (1815). Webster's Dictionary (1856) defined "value" as "worth; value is what it will bring in market." Thus, at the time this statute was enacted, the term "value" in and of itself meant market value.

Later, from 1891 until 1984, the term "true cash value" was the statutorily designated standard of property valuation. The legislature defined "true cash value" as "the price [the property] would bring at a fair, voluntary sale, not a forced or Sheriff's sale." Laws of Indiana, 1891, Chapter 99, Section 95. See also IND. CODE ANN. (Watson's Revision) § 14181 (Burns 1926) ("Real property shall be valued . . . at [its] full, true cash value"). In 1937, the legislature further provided that

> All property shall be assessed for taxation at a just valuation . . . In determining such valuation, all [assessing] officials . . . shall take into consideration all of the following elements insofar as the same shall be applicable: (a) the true cash value; (b) the normal earning capacity under conditions of average efficiency of operation of property of like kind and character, similarly located; (c) the replacement cost less proper depreciation; (d) voluntary sales, if any, of similar property in the same vicinity; and (e) the prospective value of such property, if any.

1937 Ind. Acts, Chapter 19, Section 3 ("Basis of Assessment -- Valuation of Property").(9) Thus, the legislature has historically required that property be assessed on the basis of its market value.(10) These statutes provide compelling evidence that our legislative forefathers, in order to effectuate the mandate embodied in Article 10, § 1, determined that the valuation of property for assessment purposes must be based on the market value of the property.

D. ADDITIONAL ISSUES

Despite the court's holding that the "just value" of real property is its market value, the State Board raises three specific issues which the court finds necessary to address. First, the State Board asserts that because Indiana courts have routinely held that different methods for assessing different kinds of property are valid, "the Constitution cannot be held to prescribe a single method for assessing property such as fair market value." Trial Memorandum of the Respondents (filed July 6, 1995) at 13 (emphasis added).

Individual properties have unique characteristics and those unique characteristics give property its value. To account for these unique characteristics, the Indiana Supreme Court has repeatedly held that different assessment methods may be used for

valuing different classes of property. See Clark v. Vandalia R.R. Co., 172 Ind. 409, 86 N.E. 851 (1909) (method of assessing railroad property permitted in order to secure a fair valuation of the whole property and an equitable distribution among the counties affected). See also Smith v. Stephens, 173 Ind. 564, 91 N.E. 167 (1910) (assessment of banks); Board of Comm'rs v. Johnson, 173 Ind. 76, 89 N.E. 590 (1909) (classification of banks permitted where practical effect is to place the classes on the same footing in taxing result); State ex. rel Lewis v. Smith, 158 Ind. 543, 63 N.E. 25, 63 L.R.A. 116 (statute permitting mortgage deduction on real estate).

The Indiana Supreme Court has also held, however, that regardless of the method used to calculate value, the property's "just value" must nevertheless be attained. See Clark, 172 Ind. at 411, 86 N.E. at 852. In other words, the Supreme Court has declared that Indiana's Constitution prescribes a common standard for the valuation of all property -- "just value." Because this court has determined that "just value" means market value, market value is the standard by which all property wealth is measured. Market value is not, as the State Board purports, a method of assessing property.

Next, the State Board asserts that "true tax value permits the same yardstick -- replacement cost -- to be applied to all classes

of improved property, residential, commercial and

industrial. . . . [whereas f]air market value . . . permit[s] different yardsticks for different kinds of property -- usually comparable sales for residential; income for commercial; and replacement cost for industrial." Post-Trial Brief of the Respondents on Constitutional Issues (filed December 4, 1995) at 8-9. Again, the State Board is mistaken.

In the context of property taxation, a "yardstick" is the standard of property valuation. It is an external unit of measurement by which the accuracy of the method used to calculate value is gauged. Indiana's "yardstick" for property valuation is "just value," or market value.

In turn, there are three generally accepted appraisal methods for determining the market value of real property: (1) the sales approach; (2) the income or capitalization approach; and (3) the cost approach. See generally Comment, The Road to Uniformity in Real Estate Taxation: Valuation and Appeal, 124 U.Pa.L.Rev. 1418, 1430-40 (1976). Theoretically, all three methods are employed in any appraisal, but often only one or two are useful or even usable in a given appraisal, depending on its nature and purpose. Consequently, the State Board erroneously states that a market value system "permits different

yardsticks for different kinds of property." Rather, it permits different methods for calculating one "yardstick"-- market value. The Indiana Constitution does not require a uniform method of valuation. The Louisville and N.A.R.R. Co. v. State, 25 Ind. 177, 180 (1865); Indiana State Bd. of Tax Comm'rs v. Lyon and Greenleaf Co., 172 Ind.App. 272, 276, 359 N.E.2d 931, 934 (1977). Instead, it requires "such regulations as shall secure a just valuation for taxation of all property." Id.

Admittedly, "reproduction cost minus depreciation" is recognized as a method for determining the "just value" or market value of real property. See generally Comment, The Road to Uniformity in Real Estate Taxation: Valuation and Appeal, 124 U.Pa.L.Rev. 1418, 1430-40 (1976). However, as the State Board admits, its method of "reproduction cost minus depreciation" is designed to secure "true tax value," which is unrelated to market value. Because this court holds that the "just value" of real property is its market value, the State Board's method of calculating "true tax value" cannot withstand constitutional attack. See Lyon and Greenleaf at 278, 359 N.E. at 934 ("a method of cost valuation which does not move towards the goal of securing a just valuation of all property . . . cannot withstand constitutional attack").

Finally, the State Board argues that if the Constitution mandates a system of real property taxation based on fair market value, then there can be "no room for the enactment of many social and economic policies that are accomplished through [the current "true tax value" system of] property taxation." Post-Trial Brief of Respondents on Constitutional Issues (filed Dec. 4, 1995) at 13. For example, the State Board asserts that if fair market value is the required basis of assessment, agricultural land cannot be assessed on the basis of its productivity. See 50 I.A.C. 2.1-2-2. Likewise, forest lands, windbreaks, and wildlife habitats cannot be valued at the statutory rate of $1 per acre. See n. 2, infra.

The court recognizes that preferential tax treatments offer important economic incentives to land owners to retain their land in preferred uses. Indeed, the court is aware that the income derived from agricultural and forest production may be low relative to the capital value required for the enterprise, making some farmers and foresters "land rich and income poor." See Jane Malme, Preferential Property Tax Treatment of Land at 2 (Lincoln Institute of Land Policy, 1993). Nevertheless, the court must limit its inquiry to what the Constitution means, regardless of the merits of the current preferential treatment programs. Indeed,

The doctrine of constitutional interpretation in Indiana has been that the Constitution is a fundamental instrument, not to be stretched and strained to meet the exigencies and necessities of the moment. It is a basic instrument which is rigid and firm and will withstand the emotional upheavals of the time, in the interest of protecting continually the rights guaranteed in the Constitution. The Constitution was framed to be strictly observed by all public officials and particularly the courts as guardians of the citizens' rights stated therein.

Finney, 179 N.E.2d at 721.

Under Article 10, § 1, all property is to be assessed and taxed equally and uniformly based on the property wealth it represents. In order to effectuate this directive, Indiana's statutory system of real property taxation must be based on a system which uses market value as the measure of equality and uniformity.(11)

REMEDY

For the foregoing reasons, this court holds that Article 10, § 1 of the Indiana Constitution

requires a system of property assessment and taxation based on market value. Accordingly, Indiana's "true tax value" system of property taxation under IND. CODE 6-1.1-31-6(c) and Title 50 are unconstitutional.

The court orders the State Board to make future real property assessments for purposes of taxation under a market value system. The court recognizes, however, that the current "true tax value" system cannot be changed overnight without causing disorder and confusion in public affairs. The State Board must be given a reasonable period of time to adopt and implement new regulations which use market value as the measure of uniformity and equality in the assessment of real property. Furthermore, because the State Board's rule-making authority comes from the Indiana legislature, and not this court, the Indiana legislature may need to enact legislation to enable the State Board to promulgate the regulations to effect a real property tax system based on market value.

Consequently, the Indiana legislature and the State Board are given until March 1, 1998, to bring the state's system of real property taxation into compliance with Article 10, § 1 of the Indiana Constitution. See Great Northern Ry. Co. V. Sunburst Oil & Ref. Co., 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360 (1932) (when ruling on state law, a state court may decide to give its ruling prospective effect only); Universal Group Ltd. v. Indiana Dep't of State Revenue (UGL III), 642 N.E.2d 553, 557-58 (Ind. Tax 1994) (an Indiana court may apply its judicial ruling prospectively when it decides an issue of first impression whose

resolution was not clearly foreshadowed).(12) In the interim: (1) real property tax assessments shall be made in accordance with the current "true tax value" system, (2) any challenges to real property tax assessments shall be governed by the existing law, and (3) real property tax assessments are not subject to challenge on the ground that the "true tax value" system violates Article 10, § 1 of the Indiana Constitution. Cf. Hellerstein v. Assessor, 37 N.Y.2d 1, 332 N.E.2d 279, 371 N.Y.S.2d 388 (1975) (after holding that the assessment practices of local officials were in violation of state law, the court declined to declare the previous assessment rolls a nullity and provide immediate relief; rather, the court specified a date by which the officials had to comply, allowing them to continue to use their current assessment methods in the interim); City of New Bern, 338 N.C. 430, 450 S.E.2d 735 (in striking down statutes relating to building inspections as violating the state constitution, the court applied its decision prospectively only because the prior inspections could not be undone without "untoward consequences" and because officials had reasonably relied on the statutes and had acted in good faith in carrying out legislative mandated embodied in the statutes).

Because today's decision is applied prospectively only, petitioners Wise and Shelton are not entitled to any specific relief.

Indeed, they challenged their 1989 assessments on constitutional grounds only and have not made any specific claims based on Title 50 of the Indiana Administrative Code.

Petitioner Gilday, however, challenged his 1989 assessment on both constitutional grounds and under the specific provisions of Title 50 of the Indiana Administrative Code. Consequently, his specific claims based on Title 50 may be considered under the existing "true tax value" system. The merits of Gilday's Title 50 claims will be addressed in a separate opinion, Gilday v. State Bd. of Tax Comm'rs, Case No.49T10-9309-TA-00070, to be handed down at a later date.

Likewise, to the extent that: (1) any individual class member represented by the Town of St. John has challenged his or her 1989 assessment on the basis of the specific provisions of Title 50; and (2) those claims are not barred by any statute of limitations or some other procedural impediment, those claims may also be considered under the current "true tax value" system.

(1) IND. CODE 6-1.1-1-15 defines real property as:

(1) land located within this state;

(2) a building or fixture situated on land located within this state;

(3) an appurtenance to land located within this state; and

(4) an estate in land located within this state, or an estate, right, or privilege in mines located on or minerals, including but not limited to oil or gas, located in the land, if the estate, right, or privilege is distinct from the ownership of the surface of the land; and

(5) notwithstanding IC 6-6-6-7, a riverboat licensed under the provisions of IC 4- 33 for which the state board of tax commissioners shall prescribe standards to be used by township assessors.

(2) Within this opinion, the terms "fair market value" and "market value" are used interchangeably.

(3) Other classes of land, such as windbreaks, filter strips, forest lands, and wildlife habitats, are statutorily valued at $1 per acre. See IND. CODE 6-1.1-6.2-9; IND. CODE 6-1.1-6.7-9; IND. CODE 6-1.1-6-14; IND. CODE 6-1.1-6.5-8.

(4) "Improvement" is a term of art that refers to buildings, fixtures, or appurtenances located on the land. See I.C. 6-1.1-1-15.

(5) Generally, the "cost schedules" effective for the 1989 general reassessment reflect 1985 reproduction costs which were then

reduced across the board by fifteen percent. See Transcript at 676, 694-95, 703-09.

(6) The Town of St. John is a municipal corporation in St. John Township, Lake County, Indiana. It represents a group of taxpayers who: (1) own real estate in either the Town of St. John, Lake County, Indiana, or St. John Township, Lake County, Indiana; and (2) appealed their individual property assessments for 1989. This court certified the taxpayers as a class, under Ind. Trial Rule 23, on September 15, 1994. Class Certification Order, Case No. 49T10-9309-TA-00070 at 2 (issued September 15, 1994).

(7) While the requirements of Article 10, § 1 also apply to personal property, the assessment of personal property is not at issue in this case.

(8) In responding to a concern that the State lacked the power to tax stocks and bonds altogether, Delegate Borden stated:

The gentleman . . . remarked that Government had the right to borrow money, and for that purpose issued stocks; and if we taxed that stock, we would thus restrict the General Government in the exercise of one of its powers. The fallacy of this argument is very evident, for we do not tax the stocks of the United States, but we tax the persons holding them -- tax the

amount of money invested in those stocks, as personal property.

Id. at 945.

(9) Elements (b), (c), and (d) are the three standard appraisal methods currently used for determining the "market value" of real property. See generally Comment, The Road to Uniformity in Real Estate Taxation: Valuation and Appeal, 124 U.Pa.L.Rev. 1418, 1430-40 (1976).

(10) It was only as recently as 1984 that the legislature established that the term "true cash value" no longer meant fair market value. See P.L. 42-1984, § 2. Then, in 1986, the legislature deleted the term "true cash value" altogether and replaced it with term "true tax value." P.L. 24- 1986, § 23.

(11) The court notes, however, that most state governments have universally adopted programs of preferential tax treatment to further their land use policies. For instance, "[s]tate laws provide for various methods for determining the value of land in agricultural use. The predominant appraisal approach is the capitalization of income. Valuation of [agricultural] land according to its earning capacity is consistent with the policy of linking taxation to [actual] income derived from the land as opposed to the land's speculative market value." Malme, Preferential Property Tax Treatment of Land at 16. In other words, some legislatures

have provided that the market value of agricultural land is based on its value in use, and not on its value in exchange. Likewise, some legislatures have adopted a market value system based on "acquisition value" rather than "current value." In these systems, real property is assessed on the value of the property at the time it was acquired by the taxpayer, and not the value it has in the current real estate market. See Nordlinger v. Hahn, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992).

These and other issues of preferential treatment, however, are policy decisions. Policy decisions are properly addressed by the State Board, the legislature, and the citizens of Indiana, and not this court.

(12) UGL III relies on Chevron Oil Co. v. Huson, 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971). Chevron Oil has been questioned by Harper v. Virginia Dep't of Taxation, 509 U.S. 86, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993). Harper, however, does not affect this court's reliance on UGL III or Chevron, as today's ruling is based purely on state law. See City of New Bern v. County Bd. of Education, 338 N.C. 430, 443, 450 S.E.2d 735, 743 (1994).

INDIANA TAX COURT
CAUSE NO. 02T10-9906-TA-145
KEAG FAMILY LIMITED PARTNERSHIP
v.
STATE BOARD OF TAX COMMISSIONERS

July 2nd.2001

Honorable Judge Thomas G. Fisher,

Dear sir, when the court requested I waive the thirty-day trial rule for the benefit of the court, you did not feel the delay would be for a long period of time. It has been over a year since this case was heard. Three tax periods have come and gone since the hearing was held. There needs to be a decision whether the county's actions are constitutional or within their legal subject matter jurisdiction.

With all due respect, your honor, I wish not to offend the court. But perhaps the court might provide me with a reasonable time frame in which a decision might be concluded.

I understand the importance of every decision the tax court makes. And the great burden upon your honor. May God grant you peace and wisdom in your work.

Sincerely,
"s/Gary L. Oetting"
Gary L. Oetting, pro se
KEAG Family Limited Partnership

cc: Laureanne Nordstrom-Deputy Attorney General
Indiana Government Center South,5th Floor
402 West Washington Street
Indianapolis, IN 46204-2770

Jan.26, 1847.

Chap. III.---*An Act declaring the Assent of Congress to certain States to impose a Tax upon all Lands hereafter sold by the United States therein, from and after the day of such Sale.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress is hereby given to the several States admitted into the Union prior to the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and twenty, to impose a tax or taxes upon all lands hereafter sold by the united States, in said States, from and after the day of such sale: *Provided*, That the assent hereby given shall in no wise impair that provision of the compact with the said States which declares that all lands belonging to citizens of the United States residing without the said States shall never be taxed higher than lands belonging to persons residing therein.

Approved, January 26,1847.

Certificate

No. 131

The United States of America

To all to whom these presents shall come, Greeting

Whereas Joseph Holman,
Has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Fort Wayne, whereby it appears that full payment has been made by the said Joseph Holman, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the Public Lands," for the West half of the South-east quarter of section twenty-eight, in Township thirty, of Range twelve in the district of lands offered for sale at Fort Wayne, Indiana, containing eighty acres, according to the official plat of the survey of the said Lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Joseph Holman.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with several acts of Congress, in such case provided, have Given and Granted, by these presents do give and grant, unto the said Joseph Holman, and to his heirs, the said tract above described: To Have and to Hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto said

Joseph Holman, and to his heirs and assigns forever.

In testimony whereof, I *John Quincy Adams*, PRESIDENT OF THE UNITED STATES OF AMERICA, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twenty-fifth day of June, in the year of our Lord, one thousand eight hundred and twenty-seven, and the Independence of the United States, the fifty-first.

By the President, "s/*J.Q.A.*"

"s/*G.G.*" Commissioner of the
General Land Office.

Affixed
U.S. DEPARTMENT
OF THE INTERIOR
BUREAU OF LAND
MANAGEMENT

NO. 25,043

THE UNITED STATES OF AMERICA,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS James Madden, of Allen County, Indiana, has deposited in the GENERAL LAND OFFICE of the United States, a Certificate of the REGISTER OF THE LAND OFFICE at Fort Wayne, whereby it appears that full payment has been made by the said James Madden according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the North East quarter of the South East quarter of section nine, in Township thirty one North, of Range eleven East, in the District of Lands subject to sale at Fort Wayne Indiana, containing forty acres according to the official plat of the survey of the said Lands, returned to the General Land Office by the **SURVEYOR GENERAL**, which said tract has been purchased by the said James Madden.

NOW KNOW YE, That the **United States of America,** in consideration of the Premises, and in conformity with the several acts of Congress, in such case made and provided, **HAVE GIVEN AND GRANTED**, and by these presents **DO GIVE AND GRANT**, unto the said James Madden and to his heirs, the said tract above described: **TO HAVE AND TO HOLD** the same, together with all the rights, privileges,

immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said James Madden, and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, I John Tyler **PRESIDENT OF THE UNITED STATES OF AMERICA,** have caused these letters to be made **PATENT**, and the **SEAL** of the **GENERAL LAND OFFICE** to be hereunto affixed.

GIVEN under my hand, at the **CITY OF WASHINGTON,** the tenth day of November in the Year of our Lord one thousand eight hundred and forty one and of the **INDEPENDENCE OF THE UNITED STATES** the Sixty Sixth

BY THE PRESIDENT: "s/John Tyler"

By "s/R Tyler" Sec'y

"s/J Williamson" Recorder of the General Land Office

U.S. DEPARTMENT
OF THE INTERIOR
BUREAU OF LAND
MANAGEMENT